

all the lands jointly sharing the crops only, but that they hold definite parcels of lands on account of the share of each, and that each of these plaintiffs brings a suit against the defendants in respect of so much of the lands in question as belongs to him, the point to be decided in each of such suits would be whether the respective lands form part of the Peria Pudukulam village. This point would have to be tried in the first plaintiff's suit also, since that suit would embrace every one of the lands comprised in the various suits supposed to be instituted by the plaintiffs Nos. 2 to 6. It is therefore difficult to see what useful purpose can be served by refusing to permit the first plaintiff, the melvaramdar, and the other plaintiffs, the kudivaramdar, to sue together and have the question whether the whole or any and which part of the disputed lands is attached to Peria Pudukulam village tried and settled once for all.

MUTHUVIJAYA
RAGHUNADHA
RAJU TEVAR
v.
CHOCKA-
LINGAM
CHETTI.

As to the objection that the various defendants themselves claim or are likely to claim portions of the disputed land as their separate property, I think that is altogether immaterial, because the point to be decided is not what the interests of the defendants are should the plaintiffs fail to establish their case, but whether the plaintiff's case is true.

The order of the Subordinate Judge seems, therefore, to be wrong, and I reverse it and direct that the plaint be restored to the file and dealt with according to law.

The costs will abide and follow the result.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

KOLANDAYA SHOLAGAN (DEFENDANT No. 2), APPELLANT,

v.

VEDAMUTHU SHOLAGAN (PLAINTIFF), RESPONDENT.*

Hindu Law—Suit by reversioner to set aside alienations by widow—

Fraudulent consent given by nearest reversioner.

In a suit brought by the nearest reversioner of a Hindu widow who had alienated portions of her husband's estate with the consent of the nearest reversioner alive at the date of the alienation (since deceased), it was found that

1896,
March 6, 31.

KOLANDAYA
SHOLAGAN
v.
VEDAMUTHU
SHOLAGAN.

the alienations were colourable transactions fraudulently got up for the purpose of defeating the plaintiff's claim:

Held, that the consent of the nearest reversioner, who must have been aware of the fraud, was of no avail to validate the transactions impeached, and that they were therefore invalid as against the plaintiff.

SECOND APPEAL against the decree of J. A. Davies, District Judge of Tanjore, in appeal suit No. 400 of 1893, confirming the decree of N. Sambasiva Ayyar, District Munsif of Tiruvadi, in original suit No. 321 of 1892.

Suit by plaintiff as the nearest reversioner of one Sangamalam, the deceased husband of the first defendant, for a declaration that a sale deed and a mortgage, executed on the 17th March 1881, were executed fraudulently and not for proper purposes, and were therefore invalid beyond the life time of the first defendant.

The defendants pleaded that the alienations were made in order to discharge the debts of Sangamalam, the deceased husband of the first defendant, and for money borrowed by the first defendant for necessary and proper purposes, and that the transactions in question were assented to by the then nearest reversioner Vengu Solagan, and that the plaintiff was entitled to no relief. The munsif found that the sale of 17th March 1881 in favour of the second defendant was an unreal transaction, and that the mortgage in his favour of the same date was a fraudulent and colourable transaction except as to a small portion.

With regard to the consent given by Vengu Solagan to the said transactions, the munsif found that the consent was given, but that it could not validate them as they were fraudulent and collusive transactions. He held that, where the transaction impeached is found to be collusive and fraudulent, no amount of consent on the part of the next reversioner will validate it as against remote reversioner. On appeal filed by the second defendant, the District Judge agreed with the Lower Court on the result of the evidence, and with regard to the consent given by Vengu Solagan, the judgment is as follows: "The only point that remains is "whether the next reversioner's consent validated the transaction. "He is the second defendant's father and must have been aware "of the fraudulent nature of the transaction. His consent was "therefore a fraudulent consent and is thereby vitiated." The appeal was accordingly dismissed with costs.

Defendant No. 2 appealed.

Sivasami Ayyar for appellant.

S. Subramania Ayyar for respondent.

KOLANDATA
SHOLAGAN
v.
VEDAMUTHU
SHOLAGAN.

JUDGMENT.—The finding is that the transfers made by the widow in favour of the appellant were not made, as alleged by him, for purposes binding upon the respondent, a reversioner. It was, however, contended on behalf of the appellant that, notwithstanding the above finding, the alienations should be upheld on the principle of Hindu law recognised by the Judicial Committee in *Behari Lal v. Madholal Ahir Jaya Wall*(1), since the intention of the widow in transferring the lands in dispute was to benefit the appellant and the transfers were made with the assent of the person who was the nearest reversioner then. Now to admit of the doctrine of law laid down in the case cited being applied, it should be shown that the widow's estate was completely withdrawn, so that the whole estate should get vested at once in the grantee as effectually as if the widow had renounced in favour of the nearest reversioner and the latter as full owner had conveyed the property to the grantee. But that is not the case here, as one of the items of the property in question purports to have been transferred by way of mortgage only. Even if the transaction were really a mortgage, the widow would be interested as the holder of the equity of redemption. Moreover both the Courts find that the debt, on account of which the mortgage is said to have been executed, was never due. Consequently the land comprised in the instrument of mortgage must be taken to be her property still. Her life estate not being at an end, the foundation for the application of the rule of law relied upon on behalf of the appellant fails and the second appeal is dismissed with costs.

(1) I.L.R., 19 Cal., 236,